

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 456 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ARVINDBHAI G BHATT

Appearance:

Mr. S.P.Dave, A.P.P. for the appellant
Mr. Kirit Raval, advocate rendered assistance
to the respondent-accused.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/04/99

ORAL JUDGEMENT

This State appeal has been directed against the respondent's acquittal for the offence punishable under section 7 of the Cinematograph Act 1952 and section 52(b) read with section 63, read with section 13 of the Copy Rights Act 1957. It so happened that two Entertainment Inspectors had visited the house of the accused at about 11.45 p.m. on 16.6.88, when they found that the accused was exhibiting the film "Sholay" by taking Rs. 501/from

the customer/customers and they had an occasion to see the film on the T.V. of other persons before visiting the house of the accused. They have alleged that the cassette was not licenced/uncertified and that the accused was taking Rs. 700/- for giving connection of the antenna and yearly Rs.500/- for maintenance of antenna. They have obtained the statement of the accused about exhibiting film of "Sholay" as aforesaid and thereafter they called the panch witness.

#. On the basis of the aforesaid allegations the case proceeded before the learned JMFC, Jambusar in Criminal Case No. 2314 of 1988. The prosecution did not produce the cassette as it could not do so on account of the fact that the cassette and other materials were returned to the accused before the prosecution was launched. Thus the vital piece of evidence was missing before the learned Magistrate. Besides it was a matter of undisputed fact that the licence was necessary if a place of exhibition was located within a radius of 30 kms. of Door Darshan Kendra(Public T.V.Centre). The learned Magistrate acquitted the accused of the offences charged against him on the ground that the statement of the accused was recorded by the complainants before calling the panchas. It was found by the learned Magistrate that such statement was recorded under undue influence and under threats and it was not voluntary. The panchas did not support the prosecution case at the time of trial. The basic reason why the accused deserved acquittal was that the very cassette which could have shown lack of certification or want of certification was not and could not be produced before the learned Magistrate. Besides there was neither any investigation nor any evidence from the holder or author of the Copy Right such as the producer of the film. Under such circumstances the learned Magistrate rendered acquittal in question.

#. I have heard Mr. S.P. Dave the learned A.P.P. for the State and Mr. Kirit Raval for the accused who has rendered legal assistance to the accused.

#. Firstly on examination of the provisions contained in section 13 of the Copy Rights Act 1957 it would clearly appear that Copy Right would subsist in Cinematograph films and by virtue of section 51 of the said Act, exhibition of Cinematograph film without licence from the owner of the Copy Right or Registrar of Copy Rights under the Act or in contravention of the conditions of a licence so granted would have amounted to infringement of Copy Right. Section 63 of the said Act

provides for penalties in respect of infringement of copy right. On a clear view of the provisions, it would clearly appear that only the author or assignee or licensee of a work can maintain a criminal action for protection of his Copy Right in the work in question. In the present case, the complainants or any person from the prosecuting agency did not bother even to record the statement of the producer of the film "Sholay" who ordinarily would be the licensee/author of the Copy Right in respect of exhibition of films. In fact there has been no evidence with regard to infringement of Copy Right of some one

#. Thus on the facts of the case and upon the appreciation of the evidence the conclusion reached by the learned Magistrate about the prosecution having failed to establish the guilt of the accused under the aforesaid provisions of the Copy Rights Act cannot be faulted.

#. In so far as section 7 of the Cinematograph Act 1952 is concerned, the absence of certificate of the board as suitable for unrestricted public exhibition or a restricted public exhibition would be an essential ingredient of the offence punishable under the said provision. When the very vital piece of evidence of cassette in question is not produced before the learned Magistrate and when the panchas have not supported the prosecution case, it would be difficult to uphold the prosecution case only on the sole uncorroborated testimony of the complainants whose conduct in returning the mudammal cassette to the accused before hand could not be said to be above board. Upon appreciation of evidence , the learned Magistrate has also come to the conclusion that statement of the accused could not be relied upon as the same could not be said to be voluntary in the facts and circumstances of the case. In this connection it will be useful to note following observations made by the Apex Court in the case of Rajkapoor vs. Laxman AIR 1980 SC 605. In para 9 of its judgment the Apex court observed as under:

"...but a forbidden act may not spell inevitable guilt if the law itself declares that in certain special circumstances, it is not it be regarded as an offence..."

#. In view of what is stated above and bearing in mind the facts of the case, the impugned judgment and order of acquittal cannot be said to be erroneous or

perverse in any manner. This appeal is accordingly dismissed.